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Agenda Item 5b

June 14, 2011

TO: MEMBERS OF THE HEALTH BENEFITS COMMITTEE

- I. **SUBJECT:** Adoption of Regulations: Prohibition on Rescissions
- II. **PROGRAM:** Health Policy and Planning
- III. **RECOMMENDATION:** Staff recommends the Health Benefits Committee (HBC) adopt proposed regulations to prohibit rescissions of health care coverage in specific circumstances.

IV. ANALYSIS:

At the February 15, 2011, meeting, the CalPERS Board approved, for publication and public comment, proposed regulations to amend Title 2, California Code of Regulations (CCR) § 599.502, subdivision (f), and to add proposed § 599.506, subdivision (f), to prohibit rescissions of health care coverage except in cases of fraud or intentional misrepresentation of material fact.

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the "Act"), and federal regulations (45 CFR 144, 146, and 147) prohibit group or individual health plans from retroactively terminating health coverage once the employee is covered, except in cases of fraud or intentional misrepresentation of material facts. In these cases, a 30-day notice must be provided to the enrollee prior to retroactively terminating health coverage. Specifically, the Act prohibits a retroactive cancellation of coverage due to a reduction in time base or hours.

CalPERS staff submitted the Board-approved regulations package to the Office of Administrative Law (OAL) on April 26, 2011. A *Notice of Proposed Regulatory Action* was published in the California Regulatory Notice Register 2011, No. Z-2011-0426-11 (see attachment), on May 6, 2011. CalPERS also posted the regulations package on its website on May 6, 2011.

Public Comment Period

The 45-day written comment period for the proposed regulatory action began on May 6, 2011 and will close on June 20, 2011. To date, CalPERS has not received any written comments. If comments are submitted subsequent to this

HBC meeting that result in substantive changes, staff will bring the regulations back to the HBC for approval at the August 16, 2011 meeting.

Public Hearing

Pursuant to Government Code section 11346.8(a), CalPERS provided notice in the regulations package that any interested person could submit a written request for a public hearing, to the CalPERS Regulations Coordinator, no later than 15 days prior to the close of the written comment period, June 20, 2011. As of June 5, 2011, CalPERS did not receive any requests for a public hearing; therefore one has not been scheduled.

Next Steps

Should the Board adopt the proposed regulations, the CalPERS Regulations Coordinator will forward the final rulemaking file to OAL for review and approval. If OAL approves the proposed regulations, they will be forwarded to the Secretary of State (SOS) for filing and publication in the CCR. Traditionally, the regulations become effective 30 calendar days after filing with SOS, however, CalPERS staff plan to request that the regulations become effective immediately upon filing with the SOS.

Enactment of these regulations brings CalPERS into conformity with federal law. On January 1, 2011, the federal provisions went into effect and CalPERS began implementation.

V. STRATEGIC PLAN:

This item supports Strategic Goal XII: Engage and influence the health care marketplace to provide medical care that optimizes quality, access, and cost.

VI. RESULTS/COSTS:

On December 22, 2010, CalPERS issued Circular Letter 600-067-10 to employers titled, "New Regulations Affecting Cancellations or Discontinuance of Health Coverage Due to a Reduction in Time Base." This circular letter informed employers that this change would be effective on January 1, 2011. CalPERS also issued a second Circular Letter 600-008-11 to employers titled, "ACES Modification for New Regulations Affecting Cancellations or Discontinuance of Health Coverage due to a Reduction in Time Base." This circular letter informed employers of the system changes that will prohibit retroactive cancellations due to a reduction in time base or hours. Additionally, CalPERS updated procedure manuals and provided staff training.

Economic and Fiscal Impact Statement

On April 19, 2011, the Department of Finance signed and approved the Economic and Fiscal Impact Statement, Form 399. Based on 2008 and 2009 data, CalPERS staff identified ongoing or "one-time" unavoidable system and administrative costs to the State and Public Agencies that are associated with the new prohibition on rescissions. CalPERS estimates the State employer share will be approximately \$195,780 and the Public Agency employer share will be approximately \$124,740 for the current and two subsequent fiscal years.

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Attachment